DOCUMENT RESUME

ED 306 588 CS 211 834

AUTHOR Anema, Durlynn C.
TITLE The British Press Council: A Prototype for U.S. Libel Litigation?
PUB DATE Feb 89
NOTE 21p.; Paper presented at the Annual Meeting of the Western Speech Communication Association (Spokane, WA, February 17-21, 1989).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (120)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Court Litigation; *Ethics; Foreign Countries; Journalism; Legal Problems; *Models; *News Media; *News Reporting
IDENTIFIERS *British Press Council; Great Britain; *Libel

ABSTRACT

The half million pound libel award to Jeffrey Archer during the summer of 1987 renewed interest in the British Press Council and its role in the litigation process in Great Britain. At the same time, renewed interest in re-establishing a National Press Council in the United States was voiced by several media researchers. Founded in 1953 upon recommendation of a British Royal Commission on the Press, the British Council moved in 1963 from being an exclusive press organization to having an equal public/press membership. The workings of the press council are not complex, with a simple hearing conducted without benefit of representative counsel on either side. Case hearings have increased over the years, with over 1,000 complaints brought in 1985. The voluntary nature of the British Press Council aids its progress because no party is obligated to the final recommendation. Revival of interest in a press council in the United States has occurred as libel suits have increased. The final question remains as to whether the British Press Council model would work in the United States. (Forty-three endnotes are attached.) (RS)

**********
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
**********

ED306588

# The British Press Council: A Prototype for U. S. Libel Litigation?

by Dr. Durlynn C. Anema, University of the Pacific

## Abstract

The half million pound libel award to Jeffrey Archer during the summer of 1987 renewed interest in the British Press Council and its role in the litigation process in Great Britain. At the same time, renewed interest in re-establishing a National Press Council in the United States was voiced by several media researchers. While American journalists and journalism educators know the British Press Council exists, they often are unclear about its functions and relationship to libel law in Britain.

Focus on that role and its future implications both for Britain and the U. S. are examined in this paper. Historical background information establishes the credibility of the British Press Council, while a September 1987 interview with Kenneth Morgan, director, British Press Council, clarifies the present and future roles of the British Press Council.

Founded in 1953 upon recommendation of a British Royal Commission on the Press, the British Press Council moved from an exclusive press organization to an equal public/press membership in 1963.

The workings of the press council are not complex, with a simple hearing conducted without benefit of representative counsel on either side. Case hearings have increased over the years, with over 1,000 complaints brought in 1985 .

The voluntary nature of the British Press Council aids in its progress because no party is obligated to the final recommendation.

Revival of interest in a press council in the U.S. has occurred as libel suits increase. British Press Council procedures applicable to the U. S. situation are examined through examples of cases adjudicated by that body. The final question does remain whether the British Press Council model would work in the U. S.

CS211834

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Durlynn Anema

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.



BEST COPY AVAILABLE

**The British Press Council: A Prototype for U. S. Libel Litigation?**

**by Dr. Durlynn C. Anema**
**University of the Pacific**

"500,000 pounds awarded to Jeffrey Archer."

Headlines bannered the news in the British press during summer 1987, with media experts voicing concern over the largest libel award in the history of Great Britain. Would this herald the beginning of the demise of the British Press Council, which had not participated in this history making decision? Or would its impact strengthen that organization?

"This case brings together several facets of the press and the role of the Press Council," said Kenneth Morgan, director, British Press Council, during an interview in September 1987. "I feel it has not hurt the Press Council or its adjudication process, particularly for the people we serve." 1

The British Press Council plays an important role in press dealings in Great Britain. That role, from the beginning of the British Press Council to present status and future possibilities, is the focus of this paper, with identification of possible areas where a press council might be applicable to libel litigation needs in the United States.

The British Press Council has played a significant role in the British

media, according to Morgan. "It reminds the press of their ethical obligations to the public and reminds the state and society of the desirability of a free press.

"A free press is a result of a deal. Society will tolerate some degree of irresponsibility, and that is the price of a free press. If that price is too marked then it is too high." 2

Six questions about the role of the British press and the Press Council became apparent from the Archer judgement:

1. Should Jeffrey Archer, chairman of the Conservative party in Great Britain and noted author, have by-passed the press council when he sued The Star, directly?

2. How far should newspapers and the other media pry into people's private lives?

3. Is the deputy chairman of the conservative party public enough to be fair information for the press?

4. How far is a newspaper allowed to use subterfuge to gain a story?

5. From a legal standpoint, how far are financial damages an appropriate way to alleviate the pain of a libel action? How do you quanitify that pain?

6. How far can a newspaper or the media go on an appeal, if they appeal at all? 3

If these questions were presented in the United States, a libel trial

likely would occur. In Great Britain answers become more difficult, mainly because of the influence of the British Press Council. It has been a strong litigation deterent for over forty years.

Historical Background

"Britain offers no formal guarantee of the freedom of the press...we do not even have a suitable document to which we could attach a First Amendment," Morgan says whenever he explains one of the reasons for the British Press Council approach. 4

Therefore, the Press Council's most important function is to protect the general press standards for the public, according to Morgan. That public, most of whom do not have the financial resources to file a law suit, can bring complaints before the Press Council and have them adjudicated. These complaints are handled in three ways: disallowment, withdrawal or decision not to pursue, and conciliation. Some are settled within the year, others are carried over for further investigation the following year. The voluntary nature of the British Press Council aids in its progress.

Concentration of ownership and ethical standards of newspaper proprietors and journalists in the late 1930's led government and press officials to the concept of a press council. After

World War Two ended, Parliament set up the first Royal Commission on the Press, with its purpose to recommend the establishment of a General Council of the press to maintain professional standards and integrity. The commission accomplished this recommendation in 1949, proposing that this General Press Council derive its authority from the press itself and not from the law. 5

A major concept of the report was the voluntary nature of the council. Lord Moulton, English judge and former Member of Parliament, said that "a voluntary press council has to police and satisfy the public. In that duty it tests issues and judges conduct by ethics, not by law." 6

This voluntary press council, the first of its type in the western world, was the "formal recognition that the privately owned press owed a duty to its readers and those it wrote about as well as to its writers and those who owned it." 7 Non-voluntary councils appointed by the government did exist in Norway as early as 1912 and in Sweden in 1916. The remaining western countries watched this voluntary model with interest.

In 1953, with some prodding by Parliament, British publishers decided to establish an official Press Council. The first twenty-five members came only from the press, representing owners, editors and

journalists. Membership for the lay public was recommended, but not implemented when the council began. 8

Objectives of the council have been constant since its founding: 9

1. To preserve the established freedom of the British Press; to maintain its character in accordance with the highest professional and commercial standards;

2. To consider complaints about its conduct or the conduct of others towards it, and deal with these in a practical and appropriate manner;

3. To keep under review developments likely to restrict the supply of information of public interest and importance;

4. To report publicly on developments towards greater concentration or monopoly.

In 1963 public members became part of the council, as recommended by a second Royal Commission (the Shawcross Commission.). 10 The Commission also recommended appointment of an independent chairman unconnected to the press. Until this time the chairman was elected from one of the twenty-five press persons on the council. Today, there are eighteen press members and eighteen public members, with an independent, voting chairman. 11

To date, division along party lines (public members voting one way; the press another) has never occurred. The press generally proves to be a stronger critic of incompetence of their peers as well as unethical

behavior; than the public members. 12

Press members are appointed by their own organizations. An open nomination procedure has been developed for public members, with six seats becoming vacant each year. The public is invited through newspaper and radio announcements to volunteer for consideration. The only requirement in their nomination is that they have no connection with the press. 13

Morgan notes that "one index of the impact a voluntary press council is making is the readiness of the public to serve upon it--they work hard, their expenses are paid but no fee or honorarium (is given)." 14 Nominations moved from 44 in 1978 to 670 in 1985, with the number increasing each year. 15 "This demonstrates a healthy interest in the council," said Morgan. 16

How BPC Works

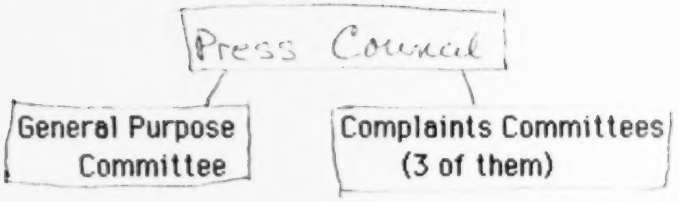
The mission of the British Press Council is two-fold:

1. To consider complaints about the conduct of the press...and to deal with these complaints in whatever manner might seem practical and appropriate..."

2. To keep under review developments likely to restrict the supply of information...(and)...to report publicly on developments that may tend towards greater concentration or monopoly in the press. 17

The structure of the British Press Council is:

7




The General Purposes Committee, which meets once a month, deals mainly with the press freedom side of the council's work. It considers complaints about the conduct of persons or organizations toward the press and studies questions relating to press freedom. The three complaints committees also meet at least once each month. Each committee has an equal number of press and public members. Morgan notes that both the Australian Press Council and the British Columbia Press Council observed these committees in action and commented that "it was impossible to tell which were public and which were press members by the comments they made or the questions they asked the witnesses." 18

The chairman of the council presides at meetings of all committees, which also are attended by both the two vice-chairmen and by the director. The complaints committees consider the evidence about each complaint, which usually is written but in a growing number of cases is given orally as well, and to recommend adjudication to the full Press Council.

Many cases are withdrawn for lack of facts after the Complaints Committee considers the evidence. If evidence merits a further hearing, the complaint moves on to the full council. Any person may complain to the

8

Council about the content or conduct of any newspaper or magazine, paid for or free, which is available to the general public. The complaintant does not have to be the locus or affected in any way by the matter about which he or she complains. This is different from the U. S., where only the person directly libeled may file the complaint. 19

Morgan comments that "I believe our unrestricted right of the public at large to complain is important and highly desirable in the interests of protecting general press standards, but it does bring problems in its train--especially when a third party complains about a newspaper's intrusion into someone else's privacy." 20

Use of the BPC

Complaintants have the option of using the Press Council or entering litigation. Only when a complaintant alleges a criminal offense by a newspaper or journalist must the council defer to the courts. In that case the complaintant goes to the police because it is a matter for the criminal courts. 21

When a complaintant goes before the Press Council, he gives up the right to also sue for monetary damages. Resolving of a complaint before the council involves only the clearing of a name, putting the record straight

publicly and making sure the media or journalist is rebuked or censured. If the council suspects that a libel action in the courts also might be undertaken, the complaintant must sign a waiver of legal action before the complaint can proceed. 22

Financial circumstances are the reason for this strict ruling. If a complaintant uses the courts, he hires a lawyer and involves substantial sums of money in the hopes of recovering those sums. In going before the Press Council, no lawyer's fees are involved and little cost occurs. The complaintant must weigh which route is the more practical for his circumstances. If the complaintant does decide to sue first, he still can have the ethical issues decided after the court hearing. 23

Morgan cites two examples of how these procedures work. In the first example, Geoffrey Prime, a civil servant, was convicted of espionage and sentenced to 38 years. After his trial he complained from prison to the Press Council about publication of a background story about him in the News of the World. His complaint, after careful consideration, failed.

As part of this same case, Sir Michael Havers used the Press Council to fight his complaint against The Sun who published a story saying that he withheld evidence in the Prime case. In Morgan's estimation, the allegation by the newspaper was "clearly a grave and damaging one" that could have

gone to court. Instead, Havers signed a waiver and took his complaint to the Press Council. The council upheld his complaint and ruled the paper's claim should have been substantiated or withdrawn. 24

Complaint Committee meetings are private and oral. During the hearing editors, journalists and complaintants can not bring a lawyer, but can bring a friend or colleague to advise and assist. Both parties attend, each giving evidence and cross-examining. Witnesses also are questioned by the committee.

Causes for action are:

*Inaccuracy
*Right to publish
*Objections to comment
*Matters of taste including treatment of race
*Selection of news
*Privacy
*Chequebook journalism
*Methods of newsgathering, including use of subterfuge
*Some issues affecting advertisements
*Conduct of newspaper competitions
*Treatment of letters to the editor 25

The adjudication recommended by the Complaints Committee to the Press Council is a reasoned judgment upholding or rejecting the complaint. When the Press Council adopts the judgment a release is made to the press for publication, except in rare cases. These adjudications are published in full by a weekly professional journalism journal and the wire service of

11

the Press Association. 26

The newspaper or magazine who was the subject of the complaint also must print the adjudication word for word. The council emphasizes speed of correction. Only eleven times in 32 years has a print publication refused to honor the obligation, and, according to Morgan, these were usually "fringe journals." 27 If a critical adjudication is not published, the Press Council issues a second adjudication, this one more condemning than the first. At this point, the other newspapers and magazines pick up the second adjudication and print it, drawing even more attention to what has occurred. 28

The weakness in this system is that the Council can only recommend publication, but does not have the power of enforcement. Critics of the Council and its voluntary nature condemn this approach. However, Morgan counters by saying:

"...the most appropriate and acceptable safeguard against the evils of publicity by a free press, is publicity itself, ... therefore the sanction which the British Press Council now has -- publication of a critical adjudication, and particularly self-publication of it by the newspaper at fault-- is the right sanction." 29

Over 1400 cases are filed before the Council, with more than ten percent of those warranting a formal, full adjudication. 30 Morgan feels the increase is due to three reasons: the consumer movement, the fact the

Press Council has a higher profile, and a lowering of journalism ethics. He also comments that the voluntary nature of the Press Council gives it the strength to deal with these problems. 31

After the Archer judgement Morgan expressed concern that it might mean a difference in the handling of future complaints . More people might try to sue for monetary compensation through the courts, said Morgan. Then he asked, "How far are financial damages the appropriate way and how do you quantify these damages?" 32

A Press Council in the U.S.

The existence of the British Press Council and its civilized method of dealing with libel suits is used by media critics in the U. S. as a reason to reestablish a U. S. National News Council. That position was suggested in The Bulletin of the American Society of Newspaper Editors, February 1988 by Brooks Hamilton, emeritus professor of journalism, University of Maine. His reasoning centered on the increase of the "chilling effect" as a result of the financial judgments against many newspapers. Hamilton did not envision the identical press council functions of Great Britain, but urged the mediation approach as superior to the immediate movement to the courts. 33

The original National News Council in the U. S. was thirty years in the

making, not established until August 1973. The goals of the council were "to serve the public interest in preserving freedom of communication and advancing accurate and fair reporting of news." 34 In achieving this goal the Council had two functions:

(1) To receive, examine and consider complaints about the accuracy and fairness of national news reporting, and

(2) To initiate studies and reports on issues relating to freedom of the press and electronic media. 35

The National News Council had jurisdiction over stories that were national in scope, allegedly erred in fact or were distributed by a news organization. It would not hear grievances against an individual. 36 This limited the jurisdiction in comparison to the broad types of local, regional and national cases heard by the British Press Council. A grievance committee first heard the complaint, which was either dismissed or recommended to the full National News Council. 37 If recommended, the Council then had to convince both sides to agree to meet and mediate, 38 an occurrence far different from the cooperative nature of the British Council.

What hurt the National News Council and ultimately led to its demise was the non-cooperation and non-coverage by the press itself. At no time was there a full endorsement of this concept by the publishers and

journalistic organizations. Its jurisdiction was by-passed, weakening it beyond repair.

Although the National Press Council ceased to exist, the Minnesota Press Council continues to hear and mediate cases. Started in the early 1970's, the Minnesota Press Council's success is due to the support of publishers and journalists in that state. 39 It is the only such council in the U. S. However, it does not hear the variety of cases mediated by the British Press Council.

British Press Council in Action

What are some typical complaints that have been settled by the British Press Council and easily could be adjudicated as well by a similar council in the U. S.?

A pharmaceutical company complained about a headline and article in the Daily Express. The headline said "Five pain-pills kill Karen, 18" and the ajacent article said doctors and coroners had been issuing warnings about the specific pain drug for 15 years. The front page report said the girl's boyfriend called for the painkiller to be taken off the market, saying the inquest had said the girl took five of the tablets.

The day after the article the Daily Express reported a new "safe" version of the drug was on the way. It then quoted the pharmaceutical company as saying that although the girl was seen taking only five tablets, the coroner had not said that five tablets killed her and that the finding was consistent with her taking many more.

The pharmaceutical company's information director sent a letter for publication, saying the girl must have taken a substantial number of tablets. The letters editor of the Express telexed the pharmaceutical company,

saying that the editor had instructed that an amended version of the letter be published. The pharmaceutical company's director refused this move and offered another letter. The editor said the first amended letter was ready to print and he was going with that. He also apologised for the original headline.

The amended version of the pharmaceutical letter was printed in an obscure place. At this point the pharmaceutical company complained to the Council.

The Council decided the newspaper headline was prominent and inaccurate, as was the report and background story. Furthermore, it was wrong of the paper to publish the correction of a serious error in such a prominent story in an obscure position in its letters column. They upheld the complaint against the Daily Express. 40

If this had occurred in the United States, the only procedure left to the pharmaceutical company would have been the courts and a lengthy libel case.

The Council rejected a complaint that The Sun mentioned that a defendant was Irish when his race was not relevant to the issue. It said the description was not relevant to the offense but neither was it pejorative or prejudicial.

The newspaper carried a front page court report headlined "Swine!" It reported that a man drank 18 pints of Guinness and ten brandies, then set fire to his house, killing his four sons. The story said the 36-year-old Irish laborer wept as he was sentenced to five years in jail for manslaughter and arson.

A person not related to the convicted man complained to the Council that the identification of the man as Irish was in clear breach of the Council's earlier ruling that a person's race or color should only be introduced into a newspaper report where it was relevant to the story being told." The complaintant considered the article racist because of its prominent position on the page and the emotive language used. The paper countered that the position was simple, saying "the man was Irish and a laborer and the newspaper would continue to call him an Irish laborer" and would have done the same with any other race.

The Press Council ruled that a person's race or color should not be introduced in a context where it is pejorative or prejudicial unless it is relevant to the story. While the description was not relevant to the offense or trial neither was it pejorative or prejudicial. The complaint against The Sun was rejected. 41

This was a case brought by an interested third party. As mentioned

earlier, only parties libeled can bring a complaint in the United States. Likely this would not be a libel complaint brought to the courts in the U. S.

In the case of an advertisement, a reader of The Courier and Advertiser complained to the Council when he found a write-up for a shampoo. It looked like an editorial item on the feature page. The Council thought it was understandable that a reader would take the item to be an advertisement. However, the newspaper gave an assurance it was not an editorial and the complaint was not upheld.

The advertisement looked like an editorial. Underneath it was a head and shoulders picture of a girl and a description of the shampoo giving sizes and prices. The reader complained to the editor that he was annoyed to find an advertisement for shampoo masquerading as a news item, because it was not marked as an advertising feature. Other advertisements were clearly marked, he said.

The editor of the newspaper countered that the caption was not an advertisement and there was no question of any payment for publishing it. It was normal content for that type of editorial feature, used to draw attention to the product as a service to readers.

The Council said that while it was understandable that a reader might take it to be an advertisment, the assurance of the newspaper that itwwas an editorial item was accepted. The complaint was not upheld. 42

Again this type of case rarely would get to the U. S. courts, but might find its way to the Federal Trade Commission.

The wide variety of cases heard by the British Press Council, from attacks on members of parliament to stating the color of a rapist, give all segments of the public a chance to challenge a story, as evidenced in the above three examples. 43 The small cost involved encourages the average citizen to pursue the "righting of a wrong." This concept of allowing all citizens to pursue the justice of a story without high cost has been the main argument for establishing councils in the U.S. However, with the success of

the Minnesota state council over the national council, it might behoove the U.S. to look toward state and regional councils rather than the national model of the British.

Conclusion

The British Press Council has met success not only because of its voluntary nature and the inclusion of both press and public members but because both complaintants and the press have been willing to use its services and abide by its adjudications. While it does not have a concrete enforcement power, its sanction of publicity and the respect it has gained over the years has resulted in it remaining a strong force in British society.

The National News Council in the U.S. was established with a strong concept of mediation, but was not used enough to develop a successful image. The failure to develop this image meant that it was bypassed more than used. In observation of the two councils it must be remembered that Great Britain is much smaller than the U.S. which encourages the voluntary nature of the British Press Council. The success of the Minnesota Press Council demonstrates that U.S. prototypes might move to state or regional lines rather than encompassing the entire nation.

While Morgan is concerned about the aftermath of the Archer judgment, he does feel the British Press Council will survive. The coming years will

demonstrate the strength of Morgan's convictions in the Council and its power. They also will demonstrate whether the time has come in the U.S. to reconsider some type of mediation for the increasing number of libel suits and their resultant large judgements.

References:

1. Kenneth Morgan, OBE, Director, British Press Council, Interview, September 16, 1987.
2. Ibid.
3. Ibid.
4. Kenneth Morgan, OBE, Director, British Press Council, "Press Credibility: A Statutory Right of Reply--Why Britain Should Not Have It," speech to the 40th World Congress of Newspaper Publishers and the International Federation of Newspaper Publishers annual meeting, Helsinki, Finland, May 24-27, 1987.
5. Michael Supperstone, "Press Law in the United Kingdom," in Pnina Lahav, ed., Press Law in Modern Democracies: A Comparative Study (New York: Longman, 1985), pp. 46-47.
6. Kenneth Morgan, OBE, Director, British Press Council, "A View from Abroad: The Experience of the Voluntary Press Council," a speech to the Conference on Media Freedom and Accountability, Gannett Center for Media Studies and Silha Center, School of Journalism and Mass Communication, at Columbia University, April 4, 1986.
7. Ibid.
8. Supperstone, op. cit., pp. 47-48.
9. Morgan, "A View from Abroad," op. cit.
10. William Hall, dean emeritus, School of Journalism, Ohio State University, interview, May 4, 1987.
11. Ibid.
12. Ibid.
13. Morgan, interview, op. cit.
14. Ibid.
15. Morgan, "A View from Abroad," op. cit.
16. The Press and the People: 32nd Annual Report of the Press Council, 1985 (London: The Press Council, 1986), p. 11.

17. Hall, op. cit.
18. Morgan, "A View from Abroad," op. cit.
19. Ibid.
20. Morgan, interview, op. cit.
21. Morgan, "A View from Abroad," op. cit.
22. Ibid.
23. Ibid.
24. Morgan, interview, op. cit.
25. Morgan, "A View from Abroad," op. cit.
26. Ibid.
27. Morgan, interview, op. cit.
28. Morgan, "Press Credibility," op. cit.s
29. Morgan, interview, op. cit.
30. Press and the People, op. cit.
31. Morgan, interview, op. cit.
32. Ibid.
33. Brooks W. Hamilton, "Proposed: A Way to Balance Rights and Wrongs without Filing Suits," The Bulletin of the American Society of Newspaper Editors, No. 702, p. 25.
34. Hall, op. cit.
35. Ibid.
36. Ibid.
37. Ibid.
38. Ibid.
39. Ibid.
40. Press and the People, pp. 91-2.
41. Press and the People, pp. 171-2.
42. Press and the People, pp. 223-4.
43. Roper Mead, "Press Council Summaries," The Media Reporter, 9:3, pp. 38-41.

Fri, May 5, 1989